



# Lamoine Board of Appeals

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## Notice of Decision

Doug Gott & Sons, Inc.  
Vs.  
Lamoine Planning Board

Decision Date: July 1, 2010

The Lamoine Board of Appeals provides this notice of decision in the above captioned matter. On the administrative appeal of a denial by the Lamoine Planning Board of a Site Plan Review Application, the Board of Appeals upholds the decision of the Planning Board on all three areas of appeal.

Based on the votes outlined in the Conclusion of Law section of this notice, the decision by the Lamoine Planning Board to deny a Site Plan Review Permit for Doug Gott & Sons in regard to Map 3 Lot 8 is upheld.

The decision by the Lamoine Planning Board to deny a Gravel Extraction Permit requested by Doug Gott & Sons in regard to Map 3 Lot 8 is hereby remanded back to the Planning Board for appropriate action.

The basis for the Board of Appeals Decision is contained in the attached Findings of Fact and Conclusions of Law.

Signed,

\_\_\_\_\_ Hancock G. Fenton, Chair

\_\_\_\_\_ James Croteau

\_\_\_\_\_ John Wuorinen

\_\_\_\_\_ Nicholas Pappas

\_\_\_\_\_ Jay Fowler

## Findings of Fact

1. The appellant, Doug Gott & Sons, Inc., is the owner of a parcel of land described as Lamoine Tax Map 3 Lot 8.
2. The Appellant applied for Site Plan Review and Gravel Extraction permits to the Lamoine Planning Board.
3. On April 13, 2010, the Lamoine Planning Board denied the Site Plan Review Permit for failure to comply with review criteria in the Site Plan Review Ordinance, sections J(6), J(10), and J(16)
4. On April 13, 2010, the Lamoine Planning Board denied the Gravel Extraction Permit for failure to comply with review criterion in the Lamoine Gravel Ordinance Section 8 (D-6)
5. The appellant filed a timely administrative appeal of both denials with the Lamoine Board of Appeals on May 5, 2010
6. The Board of Appeals met on May 24, 2010 and found that it had jurisdiction in this matter; that the appellant has standing in this matter; and a quorum of members without conflicts of interest was available to hear this matter.
7. Site Plan Review Ordinance – Section J(6) – This review criterion reads as follows:

### *6. Buffering and Screening*

*All projects requiring site plan review under this ordinance shall provide buffer zones and/or screening in accordance with the following standards:*

#### *a. Buffer Zones*

*Buffer zones of the following specified widths are required for the following areas and/or purposes:*

- 1) Along any property line of any lot located in the Residential Zone and Rural and Agricultural Zone which abuts the Residential Zone, such buffer zones shall be a minimum of fifty feet (50') in width.*
- 2) Along any property line, where the board determines it desirable and necessary, to prevent any proposed lighting from interfering with residential properties or with safe driving. Such buffer zones shall be a minimum of fifty feet (50') in width.*

- 3) *Along any property line adjacent to an existing residential use where the board determines it desirable and necessary, of all exposed storage and service areas, sand and gravel extraction operations, utility buildings and structures, automobile salvage and junk yards, parking areas, garbage collection areas, and loading and unloading areas, to minimize their visual impact on adjoining traveled ways and residential properties. Such buffer zones shall be a minimum of fifty feet (50') in width.*

b. *Screening*

*Screening, within the required buffer zones in the form of natural or man-made barriers, existing vegetation or new plantings, is required as follows:*

- 1) *Retention of Natural Features in Buffer Zones Strips*

*Natural features in buffer zones shall be maintained where possible. When natural features such as topography, gullies, stands of trees, shrubbery, rock outcrops do not exist or are insufficient to provide the required screening, other kinds of screening shall be considered.*

- 2) *Provision of Screens*

*Unless otherwise specifically indicated by the planning board, all screening and buffering material approved by the Planning Board shall be a type and species appropriate for the soil types, site conditions, and climatic conditions of the town.*

- 3) *Maintenance of Buffers and Screening*

*Buffers and screening shall be located and maintained as follows:*

- a) *Fencing and screening shall be so located within the property line to allow access for maintenance activities on both sides without intruding upon abutting properties.*
- b) *Fencing and screening shall be durable and properly maintained at all times by the owner.*
- c) *The finished side of a fence shall face abutting properties.*

*d) Natural appearing materials (such as wood and stone) shall be used whenever possible. Bright colors on fences shall be avoided.*

*e) All buffer zones shall be maintained in a neat and sanitary condition by the owner.*

8. The buffer zone proposed by the appellant meets or exceeds the 50-foot minimum required by Site Plan Review Ordinance section J(6).
9. The purpose of screening is to minimize the visual degradation to abutting property owners.
10. The screening materials on the appellants land is inadequate to minimize said visual degradation.
11. Lamoine Site Plan Review Ordinance Section J(10) reads as follows:

*10. Groundwater Protection*

*The proposed site development and use shall not adversely impact the quality or quantity of groundwater in the aquifers or any water supply systems. Projects involving common on-site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater shall be required to demonstrate that the groundwater at the nearest down hydro-geologic gradient property line shall comply, following development, with the standards for safe drinking water as established by the State of Maine. The board may place conditions upon an application to minimize potential impacts to the town's groundwater resources.*

12. The appellant's hydrological study provided sufficient evidence that it would not adversely impact the **quantity** of groundwater.
13. The appellant's hydrological study did not provide evidence that it would not adversely impact the **quality** of groundwater.
14. Site Plan Review Ordinance Section J(16) reads as follows:

*16. Comprehensive Plan.*

*The development shall be in conformance with the comprehensive plan.*

*The Policies and Policy Implementation Recommendations, Section I(G) of Lamoine's Comprehensive Plan (adopted 1996) as it applies to this case reads as follows: G. The remainder of the town shall be classified Rural and Agricultural with rules*

*similar to the current land use rules but more restrictive to commercial uses and encouraging to agricultural usage, permitting residential usage, including (but not limited to) bed and breakfasts, housing for the elderly, and nursing homes. This area would prohibit heavy industrial usages, quarrying and mining of all types but sand and gravel removal would still be permitted. Also prohibited would be new private dumps, automobile graveyards, and any usages that might lead to toxic waste contamination of the aquifer.*

*To preserve the rural and agricultural nature of this area, all new subdivisions:*

- 1. a. shall have single entrances from the main road, and  
b. shall provide 50 foot depth of screening along such main road and wherever such development abuts exiting main roads, and  
c. may submit a cluster design for consideration.*
- 2. having 16 or more units:  
a. shall have single entrances from the main road, and  
b. shall provide 50 foot depth of screening along such main road and wherever such development abuts existing main roads,  
c. shall present a cluster design, and,  
d. provide 80,000 sq. ft. of permanent commons for each 16 units or additional fraction thereof planned. Commons shall be held by the developer, a development association, or conveyed to the town and, however held, taxed appropriately proportionate to the degree of public access or public purpose served.*

*Cluster developments in this zone must meet the overall frontage and acreage requirements applicable in this zone but individual lots within the development may be below the minimums providing net residential density is no greater than is permitted in the Rural and Agricultural Zone and all other requirements for cluster development projects as specified in the land use ordinance are met. Commons include but are not limited to areas for recreational use (playing fields, snowmobile, hiking, or skiing trails, playgrounds, etc.), ornamentation (garden, park areas, etc.), protection of natural resources (deer yards, wetlands, eagle nest sites, timber stands, etc.), or scenic views, or common access to the coast, or common protection such as a fire pond. The purpose of the commons is to enhance the long-term value of the development and provide significant open space to preserve the rural nature of the town.*

15. The Lamoine Building and Land Use Ordinance, Section 4 (E-3) reads as follows:

*Rural and Agricultural Zone: To encourage a mixture of residential, agricultural and limited commercial uses.*

16. The appellant's property is located within the Rural and Agricultural Zone.

17. The definition of the Rural and Agriculture Zone within the Building and Land Use Ordinance does not include industrial uses.
18. The Lamoine Gravel Ordinance, Section 7 (D 6) reads as follows: *Will not adversely affect surrounding properties ,*
19. The Lamoine Planning Board findings included “Inadequate buffering and screening (see Criterion #6 Buffering and Screening” above)
20. The Lamoine Gravel Ordinance, Section 8B reads as follows:

*Screening*

*All gravel extraction operations shall be screened from view from adjacent public ways with fencing or vegetation. Screening shall be no less than six (6) feet in height. .*

21. The appellant's application provides for screening from adjacent public ways (Route 184) with vegetation at least 6-feet in height.

## Conclusions of Law

Based on the above findings, the Lamoine Board of Appeals makes the following votes:

**Site Plan Review Ordinance, Section J(6)** – Vote was 4-to-1 to affirm the decision of the Planning Board that screening is inadequate to minimize visual degradation. A majority of the Board of Appeals concludes that the type of vegetation allows a direct view of the gravel extraction operation from the abutting property lines, and that no other screening was proposed by the appellant.

Voting in favor were members Crotteau, Wuorinen, Pappas and Fenton. Voting in opposition was member Fowler

**Site Plan Review Ordinance, Section J(10)** – Vote was 4-to-1 to find the Planning Board decision correct that the appellant did not provide sufficient evidence that the proposal would not adversely impact the quality of groundwater. A majority of the Board of Appeals concludes that there is sufficient common knowledge that removal of organic material from the surface of the land negates the filtering effect of that organic material and that no provision was offered for water quality monitoring before and during the mining operation.

Voting in favor were members Crotteau, Wuorinen, Pappas and Fenton. Voting in opposition was member Fowler

**Site Plan Review Ordinance, Section J(16)** – Vote was 3-to-2 to find the Planning Board was correct in the application of this standard that the application is not in conformance with the Comprehensive Plan. A majority of the Board concludes that because the Comprehensive Plan and the resulting Building and Land Use Ordinance creates the Rural and Agricultural Zone which encourages a mixture of light commercial

and residential uses, but does not mention industrial uses, and the mining of gravel is more of an industrial operation, a gravel mining operation adjacent to residential properties is not in compliance with the Comprehensive Plan. A minority of the Board concludes that the mining of gravel in the Rural and Agricultural Zone is addressed and allowed in the Comprehensive Plan, and that the Comprehensive Plan is vague and outdated and should not be included in the permitting process – only ordinances should be a determining factor.

Voting in favor were members Crotteau, Wuorinen, and Pappas. Voting in opposition were members Fowler and Fenton.

**Gravel Ordinance, Section 8 (D 6)** – Vote was 4-0 in favor to find that the Planning Board was in error in its decision to deny a permit on basis of adverse effect on abutting properties based on the screening review criterion. The Board of Appeals concludes that the screening review criterion refers to public roads and not abutting properties.

Voting in favor were members Crotteau, Pappas, Fenton and Fowler. Member Wuorinen did not vote.

(Alternate member Bragdon did not vote on any matters, but was in attendance.)